

Appl. No. 10/065073
Amnd. Dated: August 25, 2003
Reply to Office Action of April 24, 2003

Remarks

As discussed in a telephone conference with Examiner Kim on April 14, 2003, Applicants have elected Group II claims (claims 7-21). Applicants reaffirm this election without traverse. Applicants reserve the right to file a divisional application on the restricted claims at a later date.

35 U.S.C. 102(b) rejection

Claims 7-21 are currently pending in this Application. Claims 7, 13, 15 and 18-21 stand rejected by the Examiner under 34 U.S.C. 102(b) as being anticipated by WO92/00145 (WO '145.) Claims 8-12, 14, 16 and 17 stand objected to by the Examiner as being dependent upon a rejected base claim but would be allowable if rewritten in independent form, including all limitations of the base claim and any intervening claims. Claims 8-12, 14, 16 and 17 have been so rewritten. Claims 9-11 and rejected claims 13 and 15 now depend from newly amended independent claim 8. Claim 7 has been cancelled. It is believed that claims 8-17 are now allowable and the rejection with respect to claims 7, 13 and 15 is now moot.

With respect to claims 18-21, Applicant's have amended claim 18 to include a cassette portion of material transparent to ultraviolet light. The WO '145 reference does not disclose such a feature. Therefore Applicants ask the Examiner to reconsider the rejection of claims 18-21 under 35 U.S.C. 102(b).

Applicants respectfully disagree with the Examiner's rejection of Applicants claims based upon the cited references. The WO '145 reference does not disclose or teach all of the elements set forth in Applicant's currently amended claim 18, which now includes the limitations of claim 19 and from which claim 21 depends. There is no teaching or suggestion in WO '145 of "an apparatus comprising a cassette for receiving at least one container having a blood or blood product therein wherein said cassette comprises at least one pressure pad; a cassette receiving pathway; a pressure source for acting on the pressure pad in the cassette wherein the assertion of pressure on said pressure pad of the cassette causes the pressure pad to exert pressure on at least one

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container contained in the cassette; wherein at least a portion of the cassette comprises a portion made of material transparent to ultraviolet radiation; and further comprising a source of radiation for irradiating at least a portion of the cassette to irradiate at least one container contained therein."

Because there is no portion of the cassette disclosed in WO '145 which is transparent to radiation, it follows that the cassette of WO '145 would be unusable in Applicants invention, which requires that the containers containing blood or blood products in the cassette be irradiated with ultraviolet radiation. Furthermore, there is no teaching that the cassette in WO '145 could be used in an apparatus comprising a source of radiation for irradiating at least a portion of the cassette.

The apparatus described in WO '145 is used in a process to separate blood into blood components. As described on page six of the Specification, the blood container is placed in a cassette on which it is lowered into an outwardly swingable centrifuge cup and centrifuged. The apparatus of Applicants' invention in contrast, is used in a process to inactivate viruses in previously separated blood components such as erythrocytes. There is no teaching or suggestion in WO '145 of using the cassette in a procedure for virus inactivation, and it is unclear how such a procedure could be done in a swinging centrifuge bucket.

35 U.S.C. 103(a) rejection

Claims 19-20 stand rejected by the Examiner under 35 U.S.C. 103 (a) as being unpatentable over WO '145 in view of U.S. patent 5,709,991 (hereinafter referred to as Lin et al.). Claim 19 has been cancelled and the elements of original claim 19 have been added to currently amended claim 18.

The Examiner attempts to cure the deficiencies of WO '145 with the Lin reference. However, as set forth in MPEP §2243, to establish a *prima facie* case of obviousness, three basic criteria must be satisfied. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to combine the reference teachings. Second, there must

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be a reasonable expectation of success. Third, the prior art references must teach or suggest all of the claimed elements. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, not in Applicant's disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Examiner's rejection does not meet the obviousness test set forth above. Although the Lin reference does disclose the use of a source of electromagnetic radiation that is integrated into a unit for photoinactivation of blood, there is no teaching or suggestion that the unit is "a cassette for receiving at least one container having a blood or blood product therein wherein said cassette comprises at least one pressure pad; a cassette receiving pathway; a pressure source for acting on the pressure pad in the cassette wherein the assertion of pressure on said pressure pad of the cassette causes the pressure pad to exert pressure on at least one container contained in the cassette; wherein at least a portion of the cassette comprises a portion made of material transparent to ultraviolet radiation and further comprising a source of radiation for irradiating at least a portion of the cassette to irradiate at least one container contained therein."

Because there is no teaching of a cassette, it follows that there is also no teaching of a source of radiation for irradiating at least one portion of a cassette, as in Applicants claim 18. Not only does Lin not disclose a cassette, but there is also no disclosure of a heat source for heating at least one portion of a cassette, as in claim 20.

There is no teaching or suggestion in either of the references to combine the apparatus of the WO '145 reference with an apparatus for inactivating viruses in blood. As set forth above, WO '145 does not teach or suggest using a cassette used for separating whole blood into components in a procedure for inactivating viruses. Lin does not suggest use of a cassette for holding containers containing blood to be virally inactivated, and does not teach or suggest use of a heater as a component of an apparatus to inactivate viruses, as set forth in Applicants' claim 20. Therefore, neither reference, either alone or in combination, teaches or suggests all of the elements of Applicants' claimed invention.

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Even if the Lin reference and the WO '145 references were combined, there is no reasonable expectation of success that the combination of the references would yield a cassette with a portion transparent to ultraviolet radiation, as in Applicants' claim 18, from which claim 20 depends.

In view of the comments set forth above, Applicants respectfully ask the Examiner to reconsider the rejection of claims 19-20.

In response to the Examiner's request to correct Applicants' priority claim in the declaration, Applicants are aware that the declaration is in error. As claimed on both the Application Data Sheet and on the Filing Receipt, Applicants' do wish to claim priority to Swedish Application No. 0000866-4 filed 03/16/00.

It is respectfully submitted that this response addresses all of the outstanding rejections raised in this Office Action and thereby places the application in condition for allowance. The Examiner is therefore respectfully requested to withdraw the claim rejections and to pass this case to issue.

It is believed that fees to cover a one month extension of time are due. Please charge the one month extension fee to deposit account 03-2316.

Respectfully submitted,

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Date

OFFICIAL

Laura M. Butterfield

Laura M Butterfield
Registration No: 47,466
Gambro, Inc.
10810 W. Collins Ave.
Lakewood, Colorado 80215
Phone: 303-231-4270
Fax: 303-231-4198